

From: Rebecca [REDACTED]
Sent: Wednesday, December 28, 2011 10:55 AM
To: DOH WSBOH
Subject: Attn: Rules Coordinator

**PETITION FOR ADOPTION, AMENDMENT, OR REPEAL
OF A STATE ADMINISTRATIVE RULE**

PETITIONER

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AGENCY RESPONSIBLE FOR ADOPTING OR ADMINISTERING THE RULE

Washington State Board of Health

DATE SUBMITTED

December 28, 2011

AMEND/REPEAL RULE

I am requesting that the Board repeal or amend WAC 246-100-197.

I request that the Board either repeal WAC 246-100-197, or amend it in the following ways:

- 1) Repeal subsection (3).
- 2) Repeal subsections (5)(a) and (5)(b).
- 3) Rescind the authorization for public health officers to require euthanization of an animal which has an owner or, at least, provide an opportunity for the owner of an animal suspected of having been exposed to rabies to appeal a decision of the local health officer requiring euthanization of the animal, and to receive due process for their appeal prior to destruction of their animal, while providing for animals to be quarantined, as appropriate, pending appeal.

RATIONAL

1. **Requiring pet owners to vaccinate their pets imposes a financial burden on pet owners.** Vaccines cost money. The state can ill-afford to pay for additional projects, and it does not appear that it proposes to in this case. So the responsibility for paying for this proposal is being imposed on citizens, who in some cases may also be ill-able to afford it.

2. **The requirement that owners vaccinate dogs, cats, and ferrets applies unequally to pet owners.** "Animal shelters" are exempted from the vaccination requirement, which applies to all other animal owners. Incidentally, the term "animal shelter" is not defined in the rule. It seems likely that previously stray animals would, if anything, be more likely to have been exposed to rabies than other pets.
3. **Requiring vaccination of pet cats could discourage adoption of stray cats.** Requiring vaccination of pets increases the cost of taking in a new animal. Discouraging adoption of strays could increase the number of stray cats on the streets and in animal shelters.
4. **Requiring all pet dogs, cats, and ferrets to be vaccinated makes it harder for low-income pet owners to keep their pets legally.** Especially in this economic downturn, some pet owners may have difficulty providing basic care for their families and their pets, without the additional expense of rabies vaccines. While some pet owners may be well-able to vaccinate their pets, for lower-income pet owners, any added expense is a significant burden. Increasing the cost of pet ownership is not helpful to low-income citizens struggling to take care of themselves and keep their pets, nor does it help pets who may need to be given up if their owners can't afford to care for them, nor does it help animal shelters trying to care for too many strays.
5. **The express statutory authority which the Board has to regulate pet ownership does not extend to wild animals such as bats, skunks, foxes, raccoons, and coyotes.** It is unclear whether and where the Board's authority comes from to ban the private ownership of these animals.
6. **The rule allows citizens to be deprived of property without due process of law, in violation of the Fourteenth Amendment of the United States Constitution.** The rule authorizes a single, unelected, non-judiciary official to order the euthanization of a privately-owned pet, upon receipt of any accusation that the animal has been exposed to a suspected rabid animal, without notification of the pet's owner; without considering evidence, if any, that the pet was not exposed to rabies; without giving the owner a chance to respond; without any opportunity for the owner to appeal the decision; and without any compensation (even if the animal is found afterwards not to have been rabid). The public health officer is not required to justify his or her decisions. The rule requires that the euthanization be carried out immediately, further inhibiting the pet's owner from responding to the allegations and decision before his or her property is destroyed. The authority to order immediate euthanizations is not limited by this rule to situations where the pet cannot temporarily be kept isolated or where the owner cannot be contacted.
7. **The rule does not require probable cause, or consideration of the full circumstances and evidence surrounding a case, before a pet is euthanized.** The rule only requires a single, unsubstantiated accusation from anyone, regardless of their credibility, the presence or absence of any circumstantial or other evidence, or whether there is credible opposing evidence.
8. **The rule does not protect or provide redress against the possibility that someone could maliciously make false allegations that a pet has been exposed to a suspected rabid animal.** A disgruntled neighbor or personal enemy of a pet owner, could make false allegations to a public health official regarding whether a pet has been exposed to a suspected rabid animal. The person making the allegations does not

need to take an oath or even identify themselves. The rule does not give pet owners the opportunity to provide evidence of an ulterior motive before their pet is euthanized. The rule does not provide (and perhaps the Board does not have the authority to provide) any consequences for willfully making false allegations.

9. **The statutory authorities cited to not expressly authorize the seizure or destruction of private property.** The Board has referenced two RCW sections (RCW 43.20.050 and RCW 16.70.040(1)) as providing the authority for this rule. While the former provides general authorization to "[a]dopt rules for the prevention and control of infectious and noninfectious diseases" and to establish quarantine procedures, among other provisions, and the latter authorizes regulation of pet ownership, neither seems to anticipate seizure and euthanization of pets, especially without any due process for the pet's owner. In fact, the RCW specifically addresses mandatory euthanization in a separate RCW section (RCW 16.70.030).